IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION

MISC. PETITION NO.21 OF 2007
IN
PETITION NO.846 OF 2004

Sharda A. Waidande & Ors. ....Petitioners
V/s.
Shalini A. Waidande & Ors. ....Respondents

Mr.Hemant Ghadigaonkar i/b Sanjay S. Gawde for the Petitioner.

CORAM : S.J. VAZIFDAR, J.
DATED : 27TH JULY, 2007.

P.C. :

1. This is a Petition for revocation of a succession certificate dated 22.12.2006 granted to the Respondents in Petition No.846 of 2004. Petitioner No.1 claims to be the first wife of the deceased. Petitioner Nos.2 to 7 are the children of the deceased and Petitioner No.1. Respondent No.1 is the second wife of the deceased. Respondent Nos.2 to 4 are allegedly children of the deceased and Respondent No.1. The Petitioners' Testamentary Petition No.256 of 2005 is pending in this Court. Petitioner No.1's husband expired on 10.2.2004. Petitioner No.1 approached the employer of her deceased husband namely the Naval Dock for retirement benefits. By a letter

dated 6.4.2004 she was informed that the Respondents had also made a claim. She was therefore requested to produce the succession certificate from the Court and the original marriage certificate.

2. In the circumstances, the Petitioners filed Testamentary Petition No.256 of 2005. The Petitioners served a citation upon the Respondents in view of the fact that they had knowledge of the claim made by the Respondents.

3. Prior thereto, the Respondents had filed Misc. Petition No.846 of 2004 for succession certificate. The citation was not served upon the Petitioners. As no citation had been served on the Petitioners and as the Petitioners were unaware of the said Petition having been filed, they did not participate in those proceedings. It is in these circumstances that the succession certificate dated 22.12.2006 came to be granted in Petition No.846 of 2004.

4. In the facts and circumstances of this case, it is necessary that the succession certificate dated 22.12.2004 granted in Petition No.846 of 2004 is revoked, as the claim of the Petitioners and the

Respondents will have to be adjudicated in their respective proceedings.

5. In the circumstances, Misc. Petition is made absolute in terms of prayers (a) and (b). Petition No.846 of 2004 shall be decided afresh. Petition No.846 of 2004 and the Testamentary Petition No.256 of 2005 shall be heard together.

6. The Petition is accordingly disposed of.